TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 149.

WALTER W. BURDETTE, PLAINTIFF IN ERROR,

vs.

DAVID L. BARTLETT AND HORACE W. ROBBINS, AS BARTLETT, ROBBINS & CO.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 2, 1875.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief-justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between David L. Bartlett and Horace W. Robbins, as firm of Bartlett, Robbins & Co., plaintiffs, and Flodoardo Howard, Samuel A. Peugh, Robert S. Lacey, N. M. Ross, William Helmick, & Walter W. Burdette, defendants, at law, No. 12830, a manifest error hath happened, to the great damage of the said Walter W. Burdette, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the United States, this 27th day of January, in the year of our Lord 1875, and of the Independence of the United States the 99th.

[SEAL.]

R. J. MEIGS,
Clerk S. C. D. C.,
By JOB BARNARD,
Assistant Clerk.

DISTRICT OF COLUMBIA, *to wit:*

To David L. Bartlett & Horace W. Robbins, as firm of Bartlett, Robbins & Co.:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Walter W. Burdette is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief-justice of the said supreme court of the District of Columbia.

Ch'f-Just.

JANUARY 29, 1875.

I hereby acknowledge service of the above writ of error and citation.

A. C. BRADLEY,
Att'y for Def'ts in Error.

(Indorsed:) 12830. Bartlett, Robbins & Co. vs. Walter W. Burdette. Writ of error. Filed Jan. 27, 1875. R. J. Meigs, clerk.

REC. 149—1

2 In the supreme court of the District of Columbia, the 25th day of January, 1875.

DAVID L. BARTLETT & HORACE W. ROBBINS, firm of Bartlett, Robbins & Co., plaintiffs,
vs.
FLODOARDO HOWARD, SAMUEL A. PEUGH, Robert S. Lacey, N. M. Ross, William Helmick, & Walter W. Burdette, defendants.
} At law. No. 12830. In error.

Know all men by these presents that we, Walter W. Burdette and Andrew Goddard, are bound unto the above-named plaintiffs in the sum of four thousand dollars, to be paid to the said plaintiffs, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 25th day of January, 1875.

Whereas the above-named Walter W. Burdette hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Walter W. Burdette shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WALTER W. BURDETTE. [SEAL.]
ANDREW GODDARD. [SEAL.]

Sealed and delivered in presence of—
SAM'L C. SMOOT.

Approved Jan'y 27th, 1875.

D. K. CARTTER,
Chief-Justice.

(Endorsed:) Filed Jan. 27, 1875. R. J. Meigs, clerk.

3 The answer of the chief-justices and the justices of the supreme court of the District of Columbia to the foregoing writ of error is in the words following, to wit:

Declaration.

In the supreme court of the District of Columbia.

DAVID L. BARTLETT AND HORACE W. ROBBINS, trading as Bartlett, Robbins & Co.,
vs.
FLODOARDO HOWARD, SAMUEL A. PEUGH, Robert S. Lacey, N. M. Ross, William Helmick, Walter W. Burdette.
} At law. No. 12830.

4 The plaintiffs sue the defendants for money payable by the defendants to the plaintiffs, for that defendants Flodoardo Howard, Samuel A. Peugh, Robert S. Lacey, and N. M. Ross, by their promissory note now overdue, on the 16th day of July, 1873, jointly and severally promised to pay to the order of defendant William Helmick

$1,993.00 twelve months after date, with interest at ten per cent. per annum, and said defendant William Helmick endorsed said note to defendant Walter W. Burdette, who endorsed the same to the plaintiffs; and said note was duly presented for payment and was dishonored; whereof the said defendants William Helmick and Walter W. Burdette had notice, but did not, nor did any of them, pay the same.

And the plaintiffs claim $1,993.00, the amount of said note, with interest thereon at the rate of ten per centum per annum, from July 16, 1873, the costs of protest, and the costs of this suit.

A. C. BRADLEY,
Att'y for Pl'ffs.

5 The defendants are to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

A. C. BRADLEY,
Att'y for Pl'ffs.

STATE OF MARYLAND,
City of Baltimore, ss:

Before me came Horace W. Robbins, who, being duly sworn, deposes and says that the annexed note, dated July 16, 1873, for $1,993, and interest at ten per centum per annum, payable twelve months after date, to the order of William Helmick, and signed by F. Howard, S. A. Peugh, R. S. Lacey, and N. M. Ross, was passed to the plaintiffs in the annexed declaration by W. W. Burdette, one of the defendants, for value; that the same has not been paid, and that the defendants Walter W. Burdette, William Helmick, Flodoardo Howard, Samuel
6 A. Peugh, Robert S. Lacey, and N. M. Ross are indebted to deponent and David L. Bartlett, trading as Bartlett, Robbins & Co., $1,993.00, the amount of said note, with interest from July 16, 1873, at ten per centum per annum, and $2.18, costs of protest, free of all set-offs and just grounds of defense.

HORACE W. ROBBINS.

Subscribed and sworn to before me this seventh day of August, 1874.
[SEAL.] CHARLES A. WAGNER,
Notary Public.

$200.96.
1,993.

WASHINGTON CITY, D. C., *July 16th*, 1873.

Twelve months after date we, or either of us, jointly and severally, promise to pay to the order of William Helmick the sum of one thousand nine hundred and ninety-three dollars, with interest at ten p'r cent. p'r annum, value received.

F. HOWARD.
S. A. PEUGH.
R. S. LACEY.
N. M. ROSS.

(Endorsed:) W'm Helmick. W. W. Burdette.

7 DISTRICT OF COLUMBIA,
Washington County, ss:

By this public instrument of protest be it known that, on the eighteenth of July, in the year eighteen hundred and seventy-four, at the

request of Nat. Bank of Republic, holders of the original note, hereto attached, I, John McKenney, notary public, residing in said county, duly commissioned and sworn, presented said note to S. A. Peugh, one of the drawers, and demanded payment thereof, which was refused, and I was answered by him, "Can't pay."

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, against the drawers and indorsers of the said note, and all others whom it may or doth concern, for all cost, exchange, re-exchange, charges, damages, and interest, suffered or to be suffered for want of payment thereof.

8 And on the same day I addressed written notice of protest to each indorser, viz:

Notice to	W'm Helmick.....	directed to	}	And delivered same next
Do	" W. W. Burdette.....	do "	}	business day.
Do	and mailed	do "		
Do	" Bartlett, Robbins & Co.	do "	}	Richard Cornelius, cash'r,
Do	" R. Cornelius, cash.....	do "	}	Baltimore, M'd.

In testimony whereof I have hereunto set my hand and affixed my notarial seal of office the day and year aforesaid.

[SEAL.] J. McKENNEY,
Notary Public.

Protesting, $1.75; notices, .40; postage, .3—2.18. Recorded, book No. 4, fo. 195.

(Endorsed:) 12830. David L. Bartlett and Horace W. Robbins, trading as Bartlett, Robbins & Co., vs. Flodoardo Howard, Samuel A. Peugh, Robert S. Lacey, N. M. Ross, William Helmick, Walter W. Burdette. The clerk will file this nar., note, protest, & affidavit, and issue. A. C. Bradley, att'y for pl'ffs. Filed Aug. 8, 1874. R. J. Meigs, clerk.

9 *Summons.*

In the supreme court of the district of Columbia, the 8th day of August, 1874.

DAVID L. BARTLETT AND HORACE W. ROBbins, as firm of Bartlett, Robbins & Co., plaintiffs,
vs.
FLODOARDO HOWARD, SAMUEL A. PEUGH, Robert S. Lacey, N. M. Ross, W'm Helmick, and Walter W. Burdette, defendants.
} At law. No. 12830.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

10 Witness: D. K. Cartter, chief-justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By JOB BARNARD, *Ass't Clerk.*

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.—A. C. Bradley.

(Endorsed:) No. 12830. At law. Bartlett, Robbins & Co., vs. Flodoardo Howard et al. Issued Aug. 8, 1874. Served copies of the declaration, affidavit, notice to plead, and this summons, on the defendants the 12 day of Aug't, 1874. Not to be found, Ross & Helmick. Alexa. Sharp, marshal.

11 To this declaration pleas were filed by defendants, Flodoardo Howard, Samuel A. Peugh, and Robert S. Lacey, on which the plaintiffs joined issue, after which the plaintiffs dismissed the suit as to all the defendants except Walter W. Burdette.

Clerk.

Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing the third Monday, 19th day of October, A. D. 1874.

MONDAY, *October 19th*, 1874.

By order of Chief-Justice Cartter, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

12 DAVID L. BARTLETT & HORACE W. Robbins, trading as Bartlett, Robbins & Co., pl'ffs, *vs.* WALTER W. BURDETTE, AND OTHERS, DEF'TS. } At law. No. 12830.

Now come here the plaintiffs, by their attorney, M'r A. C. Bradley, and pray judgment of their demand against the defendant Burdette, who, though served with copies of the declaration, notice to plead, and summons, August 12, 1874, hath not pleaded to the action.

Therefore, it is considered that the plaintiffs recover against said defendant Burdette the sum of nineteen hundred and ninety-three dollars, principal of the promissory note sued on, with interest thereon at the rate of ten per cent. per annum from July 16, 1873, with $2.18 costs of protest and $ costs of suit, and have execution thereof.

13 On the foregoing judgment fi. fa. was issued November 20, 1874.

Clerk.

In the supreme court of the Dist. of Col.

BARTLETT, ROBBINS & Co. *vs.* W. W. BURDETTE ET AL. } 12830. Law.

And now comes into court said defendant, by W'm F. Mattingly, his attorney, and moves the court to quash the writ of fieri facias in this cause, and to vacate the judgment therein, because he says that the sum as entered is contrary to law.

Or, as alternative relief, he prays that he may be allowed to file a supersedeas bond, nunc pro tunc.

W'M F. MATTINGLY,
Pl'ffs' Att'y.

(Endorsed:) Filed Nov. 21, 1874. R. J. Meigs, clerk.

14 SATURDAY, *November* 21, 1874.

Session resumed pursuant to adjournment, Chief-Justice Cartter presiding.

DAVID L. BARTLETT & HORACE W. ROBBINS, as firm of Bartlett, Robbins & Co., pl'ffs, *vs.* WALTER W. BURDETTE, IMP. WITH OTHERS, def't. } At law. No. 12830.

Upon argument of said defendant's motion to quash the fi. fa. issued in this case, and to set aside the judgment, it is considered that said fi. fa. be, and the same is hereby, quashed, and the judgment entered be, and the same is hereby, set aside, and a new judgment entered against said defendant for the amount claimed.

Therefore it is considered that the plaintiffs recover against said defendant Burdette for the sum of nineteen hundred and ninety-
15 three dollars, with interest thereon at the rate of ten per cent. per annum from July 16, 1873, to July 16, 1874, then legal interest until paid, and $37.40, costs of suit, and have execution thereof.

Motion to rescind last order.

In the supreme court of the District of Columbia.

BARTLETT, ROBBINS & Co. *vs.* WALTER W. BURDETTE ET AL. } At law. No. 12830.

And now come the plaintiffs, and by their attorney, A. C. Bradley, move the court that the order passed in this cause November 21st, 1874, quashing the writ of fi. fa., setting aside the judgment, and entering a new judgment herein, be vacated.

The grounds upon which this motion is founded are—

16 1st. That the motion for said order does not state the grounds upon which it is founded, is not sworn to by the mover, and is not supported by affidavits or other papers; and

2d. That no copy of said motion was served upon the plaintiffs or their attorney at any time, or before the hearing thereof, as required by rule 92 of rules of practice of this court.

A. C. BRADLEY,
Att'y for Pl'ffs.

The grounds above stated by me are true.

A. C. BRADLEY.

Subscribed and sworn to before me this 24th day of November, 1874.
[SEAL.] E. L. SCHMIDT, *J. P.*

Served notice of above on W'm F. Mattingly, by leaving copy at his office, on Tuesday, Nov. 24, 1874, with notice that the motion would be brought up on Saturday, November 28, inst.

A. C. BRADLEY.

(Endorsed:) Filed Nov. 25, 1874. R. J. Meigs, clerk.

17 SATURDAY, *November* 28, 1874.

Session resumed pursuant to adjournment, Chief-Justice Cartter presiding.

DAVID L. BARTLETT & HORACE W. ROBBINS, trading as Bartlett, Robbins & Co., plff.,
vs.
WALTER W. BURDETTE & OTHERS, DEF'TS. } At law. No. 12830.

Upon argument of the plaintiffs' motion to vacate the order and judgment entered in this case November 21, 1874, it is considered that said motion be, and the same hereby is, refused and overruled.

Bond for appeal to general term.

In the supreme court of the District of Columbia.

BARTLETT, ROB'INSON & OTHERS, PLAINTIFF',
vs.
W. W. BURDETTE ET AL., DEFENDANT'. } No. 12830. Law.

The defendant Burdette, having appealed to the general term
18 from the judgment pronounced herein on the 21 of November, 1874, in the circuit court, and Andrew Goddard, surety for said appeal, for themselves, and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

WALTER W. BURDETTE, *Appellant.*
ANDREW GODDARD, *Surety.*

Approved.

D. K. CARTTER, *Chief-Justice.*

(Endorsed:) Filed Nov. 24, 1874. R. J. Meigs, clerk.

19 Proceedings before the supreme court of the District of Columbia, sitting in general term, commencing on the first Monday, 5th day of January, 1875. Present, Chief-Justice Cartter and Justices Wylie and MacArthur.

MONDAY, *January* 18, 1875.

Session resumed pursuant to adjournment. Present, Chief-Justice Cartter, and Justices Olin, Wylie, and Humphreys. Justice MacArthur absent, hearing a habeas corpus.

DAVID L. BARTLETT & HORACE W. ROBBINS, firm of Bartlett, Robbins & Co., pl'ffs,
vs.
WALTER W. BURDETTE, DEF'T. } At law. No. 12,830.

And again come here as well the plaintiffs as the defendant, by their attorneys, and thereupon, because it appears to the court here that there is no error in the record of the court below, or in its judg-
20 ment, therefore, it is considered that the said judgment be, and the same is hereby, affirmed, and that the defendant pay the cost of the appeal, to be taxed by the clerk, and that the plaintiffs have execution thereof.

Authentication of record.—clerk's certificate.

CLERK'S OFFICE, *Supreme Court of the District of Columbia:*

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 4th day of May, 1875.

[SEAL.]

R. J. MEIGS, *Clerk*,
By JOB BARNARD, *Assistant Clerk.*

Cost of transcript, $6.00.

(Indorsement on cover:) No. 149. Walter W. Burdette, plaintiff in error, vs. David L. Bartlett & Horace W. Robbins, as Bartlett, Robbins & Co. Dist. of Columbia sup. court. Filed 2nd October, 1875.

Supreme Court of the United States.

No. 149. OCTOBER TERM, 1877.

WALTER W. BURDETTE,
Plaintiff in Error
vs.
BARTLETT, ROBBINS & CO.

Brief of Plaintiff in Error.

PHILADELPHIA BAR ASSOCIATION

WM. E. MATTINGLY,
Attorney for Plaintiff in Error.

R. O. Polkinhorn, Printer.

Supreme Court of the United States.

No. 149. OCTOBER TERM, 1877.

WALTER W. BURDETTE,
Plaintiff in Error,
vs.
BARTLETT, ROBBINS & CO.

Brief of Plaintiff in Error.

WM. F. MATTINGLY,
Attorney for Plaintiff in Error.

This was a suit brought in the court below against the makers and endorsers of a promissory note joined in one action. Pending the litigation, judgment was taken against the plaintiff in error who was the last endorser.

Assignment of Error.

1st. The court erred in giving judgment, because there was a misjoinder of parties, defendants.

2d. There is error in the judgment, because the makers and endorsers of a promissory note cannot be joined as defendants in the same action.

The only point in this case is whether, under the act of Congress (Rev. Stat., Dist. of Col., sec. 827), the makers and endorsers of a promissory note can be joined as defendants in the same action.

The statute reads as follows, viz:

"When money is payable by two or more persons, "jointly or severally, as by joint obligors, covenantors, "makers, drawers, or indorsers, one action may be sus- "tained and judgment recovered against all or any of "the parties by whom the money is payable, at the "option of the plaintiff."

Every State which has passed a law to enable the holder of a promissory note to sue all parties to it, both makers and endorsers, in one action, has so stated in plain and unambiguous terms, as in the State of Mississippi, reported in 16 Pet., 89; *Keary* vs. *Far.* & M. Bk.

This act in force in this District unquestionably does not, in express terms, authorize the joinder of makers and endorsers as defendants. There is no provision as to the entry of judgment, or the effect of the payment of the judgment by any one of the defendants, or in case of payment by the endorser, for the entry of the judgment against the makers to his use; all of which matters are provided for by the laws of those States in which such a proceeding is authorized.

This law was, evidently by its terms, intended to modify and remedy the common law rule, that in case of a joint and several contract all the parties must be sued in one action, or a separate action be brought against each. Under this act, a plaintiff can sue two or more of the parties at his pleasure, in one action, and is no longer obliged to join all or sue each separately. The very illustrations given in the law show that the law was designed to remedy this defect in the common law rule. The contract of maker and endorser on a promissory note, is neither a joint nor a joint and several contract. The contract of each is wholly distinct and different. That of the maker is to pay absolutely; that of the endorser

merely to pay conditionally, viz: provided a demand has been made on the maker, failure to pay by him and due notice to the endorser.

It is respectfully submitted that, unless a statute in plain terms requires two such distinct contracts to be joined in one action, no such construction ought to be given to it.

It is no answer to this to say that in this case the suit was dismissed against all the other defendants below, except the plaintiff in error.

There is nothing in the record to show that this was done. The statement in the record is on page 5, section 11, and is as follows:

"To this declaration pleas were filed by defendants "Flodoardo Howard, Samuel A. Pugh and Robert S. "Lacey, on which the plaintiffs joined issue, after which "plaintiffs dismissed the suit as to all the defendants, "except Walter W. Burdette.

CLERK."

This is not signed by the clerk, does not profess to be a transcript of any original papers on file in the case, and is in no way certified to by the clerk, even as a summary of what was done. The clerk's certificate to the record (see page 9) is, that the original writings true copies of which are annexed, constitute the record of the proceedings of said court in this cause.

This summary of proceedings, even if it is possible to consider it as a part of the record, yet does not show a dismissal as to the other parties by any order or judgment of the court; but simply that the *plaintiffs* dismissed, which they could not do; but which they might have asked the court to do.

I feel justified in claiming that this is no part of the

record, because, in fact, prior to the judgment against Burdette and his appeal therefrom, there had been no attempt by the plaintiffs below to dismiss the suit as to the other defendants.

In actions *ex contractu* misjoinder of parties defendants may be taken advantage of on error. Ch., Pl. 44.

WM. F. MATTINGLY,
Attorney for Plaintiff in Error.

SUPREME COURT OF UNITED STATES.

No. 149.

OCTOBER TERM, 1877.

WALTER W. BURDETTE, Plaintiff in Error,

vs.

DAVID L. BARTLETT and HORACE W. ROBBINS, as BARTLETT, ROBBINS & CO.

BRIEF FOR DEFENDANTS IN ERROR.

A. C. BRADLEY,
Counsel for Defendant in Error.

BYRNSFORD, Pr., 503 7th St., Washington, D. C.

Supreme Court of the United States.

No. 149.

OCTOBER TERM, 1877.

WALTER W. BURDETTE,
Plaintiff in Error,
vs.
DAVID L. BARTLETT and HORACE W. ROBBINS, as BARTLETT, ROBBINS & Co.

BRIEF FOR DEFENDANTS IN ERROR.

The defendants in error sued in one action, below, the makers and endorsers of the following promissory note:

"$1,993. WASHINGTON CITY, D. C., *July 16th*, 1873.

"Twelve months after date we, or either of us, jointly and severally promise to pay to the order of William Helmick the sum of one thousand nine hundred and ninety-three dollars, with interest at ten per cent. per annum, value received.

"F. HOWARD,
"S. A. PEUGH,
R. S. LACEY,
N. M. ROSS.

"Endorsed—
"WILLIAM HELMICK,
"W. W. BURDETTE."

Service was had upon all the defendants except Ross and Helmick, August 12th, 1874, and pleas were filed by Howard, Peugh, and Lacey, after which the suit was dismissed as to all except Burdette.

Judgment by default was rendered against Burdette October 19th, 1874, and a writ of *fieri facias* issued thereon November 20th, 1874.

On November 21st, 1874, upon motion of the defendant that day filed, and without notice to the plaintiffs, the Court quashed the writ of *fieri facias*, vacated the judgment, and entered a new judgment for the amount claimed, and thereupon the defendant appealed to the General Term of the Court, and filed his bond on November 24th, 1874. The judgment was affirmed by the General Term January 18th, 1875, without argument, and this writ of error prosecuted.

The only question raised is, whether the makers and endorsers were properly joined as defendants in the action under section 20 of the act of Congress approved February 22, 1867, entitled "An act to amend the law of the District of Columbia in relation to judicial proceedings therein," which is as follows:

"Where money is payable by two or more persons jointly or severally, as by joint obligors, covenantors, makers, drawers, or indorsers, one action may be sustained and judgment recovered against all or any of the parties by whom the money is payable, at the option of the plaintiff. But an action against one or some of the parties by whom the money is payable may, while the litigation therein continues, be pleaded in bar of another action against another or others of said parties."

14 Stat. at Large, 405.

I.

The joinder as defendants in "one action" of "all or any of the parties by whom the money is payable," is expressly authorized by the statute, "where money is payable by two

or more persons jointly or severally," and no clause excludes the parties severally liable upon promissory notes.

II.

If the literal expression of the act is awkward, or obscure, the intention is perfectly manifest. It is a remedial statute, and its construction must be liberal in its application to cases within the evident purpose of the law maker.

"Remedial statutes are those which are made to supply such defects and abridge such superfluities in the common law, as may arise either from the general imperfection of all human laws, from change of time and circumstances, * * * or from any other cause whatsoever."

"There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy; that is, how the common law stood at the making of the act; what the mischief was for which the common law did not provide; and what remedy the Parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy."

1 Black. Com., 87.

"The equity of a statute," says Coke, "is a construction made by the judges, that cases out of the letter of a statute, yet being within the same mischief, or cause of making the same, shall be within the same remedy that the statute provideth."

Coke, 24. b. Inst.

"In remedial cases," says Lord Mansfield, "the construction of statutes is to be extended to other cases within the reason and rule of them."

Atcheson *v.* Everitt, Cowp., 382, 391.

Plowden says: "It is not the words of the law, but the internal sense of it that makes the law, and our law (like all others) consists of two parts, viz: of body and soul. The letter of the law is the body of the law, and the sense and

reason of the law is the soul of the law, *quia ratio legis est anima legis*. And the law may be resembled to a nut which has a shell and a kernel within. The letter of the law represents the shell, and the sense of it the kernel; and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit by the law if you rely only on the letter. And as the fruit and profit of the nut lies in the kernel and not in the shell, so the fruit and profit of the law consists in the sense more than in the letter. And it often happens that when you know the letter, you know not the sense, for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive."

2 Plowd., 465; Eyston *v.* Studd.

"A remedial act should be so construed as most effectually to meet the beneficial end in view, and to prevent a failure of the remedy. As a general rule a remedial statute ought to be construed liberally."

"Thus it is laid down that a statute may be extended by construction to other cases within the same mischief and occasion of the act, though not expressly within the words."

Dwarris, 231.

In Wilkinson *v.* Leland *et al.*, it is said, "This is a legislative act, and is to be interpreted according to the intention of the legislature, apparent upon its face. Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature."

2 Pet., 627, 662.

"What is implied in a statute is as much a part of it as what is expressed."

Gelpcke *v.* City of Dubuque, 1 Wall., 221.
Dubois *v.* Hepburn, 10 Pet., 1.
Hoguet *v.* Wallace, 28 N. J., (4 Dutch.,) 524.
Cullerton *v.* Mead, 22 Cal., 95.
Jackson *v.* Warren, 32 Ills., 331.
Pearson *v.* Lovejoy, 53 Barb. N. Y., 407.

People *v.* Tibbets, 4 Cow., 384.
Holmes *v.* Carley, 31 N. Y., 289.
Hudler *v.* Golden, 36 N. Y., 446.
Adm'x of Tracy *v.* Adm'r of Card, 2 Ohio State N. S., 431.
Staniels *et al. v.* Raymond & Trustee, 4 Cush., 314.
Gibson *v.* Jenney, 15 Mass., 205.
State use of Sprigg *v.* Jones *et al.*, 8 Md. 88.
Converse *v.* Burrows, 2 Minn. 229.

III.

The construction of the statute claimed, is the one adopted by the Court below, under which the practice of suing the parties to promissory notes in one action has been followed ever since the passage of the act. Similar statutory provisions have been embodied in the laws of many of the States, and this practice, therein long established, has been found to be practically convenient and not inconsistent with the rights of parties.

IV.

By the record it appears that the plaintiff in error sued out this writ merely for delay, and the defendants ask that Section 2 of Rule 23 of the Rules of this Court, applicable to such cases, be enforced.

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